

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, October 1, 1998

DIVISION ONE

A077639 The People v. Joseph John Carbone.

Accordingly, the judgment is affirmed. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

A078166 -- The People v. Humberto Grageda.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

A080820 -- Heather Hollins v. Edward Sullivan et al.

The judgment is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

A080909 -- The People v. Mamadou Konate.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

A081731 -- In re Mark N., a Person Coming Under the Juvenile Court Law.

The order is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

Thursday, October 1, 1998 (continued)

A081947 -- Council for Private Postsecondary and Vocational Education et al. v. Columbia Pacific University et al.

The order denying plaintiff's preliminary injunction motion is reversed. The case is remanded to the trial court for reconsideration of the motion in light of the views expressed in this opinion. The merits of plaintiff's motion are committed to the sound discretion of the trial court. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

A082361 -- The People v. Anthony Tyrone Davis.

The judgment is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

A083056 -- The People v. Thomas David Waiton.

The judgment is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

DIVISION TWO

A079793 -- The People v. Frank Helman Kaurin.

The judgment is affirmed. Lambden, J. We concur: Kline, P.J., Ruvo, J. (Not for Publication.)

DIVISION FOUR

A077487 -- Freemark Abbey Winery v. Monzio, Inc.

The judgment is reversed except as to that portion of the judgment attributable to the office lease between the parties. Monzio shall recover its costs and attorney fees in a reasonable amount to be fixed by the trial court. Hanlon, P.J. We concur: Poché, J., Reardon, J. (Not for Publication.)

Thursday, October 1, 1998 (continued)

A079298 -- In re Debra D., Jr. et al., Persons Coming Under the Juvenile Court Law.

A079307 -- In re William D., Jr. et al., Persons Coming Under the Juvenile Court Law.

The orders of June 25, 1997, are affirmed. Hanlon, P.J We concur: Poché, J., Reardon, J. (Not for Publication.)

DIVISION FIVE

IN THE MATTER OF THE ASSIGNMENT OF THE HONORABLE JAMES R. LAMBDEN TO SIT AS A JUSTICE OF THIS COURT.

By The Court: It is ordered that the assignment of the Honorable James R. Lambden, Associate Justice of the Court of Appeal, First Appellate District, Division Two, to sit as a Justice in Division Five be spread upon the minutes in full. Stevens, Acting P.J.

IN THE MATTER OF THE ASSIGNMENT OF THE HONORABLE RICHARD A. KRAMER TO SIT AS A JUSTICE OF THIS COURT.

By The Court: It is ordered that the assignment of the Honorable Richard A. Kramer, Judge of the San Francisco County Superior Court, to sit as a Justice in Division Five be spread upon the minutes in full. Stevens, Acting P.J.

Thursday, October 1, 1998 (continued)

A081407 -- John Stiglich v. Merit Board of Contra Costa County, Contra Costa County Fire Protection District, R.P.I, International Association of Fire Fighters, Local 1230.

The order of the trial court denying the request for attorney fees is affirmed.

The order of the trial court denying the request for costs in the prior writ of mandate proceeding is reversed, and the matter is remanded with instructions to award appellant his requested statutory costs for that proceeding.

The parties shall bear their own costs on this appeal. Champlin, J.* We concur: Jones, P.J., Haning.

*Judge of the Superior Court of Napa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Friday, October 2, 1998

DIVISION ONE

**A083393 -- Janeth H. v. The Superior Court of Sonoma County, Sonoma
County Department of Human Services, R.P.I.**

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.)

The section 366.26 hearing is set for October 7, 1998. Therefore, our decision is final in this court immediately. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

DIVISION FOUR

A078881 -- The People v. Maurice Jones.

By The Court: Due to clerical error and inadvertence, the opinion that issued September 25, 1998 was mistakenly file-stamp dated: "August 25, 1998". Appellant's motion to correct the file-stamped date is granted.

The clerk of this court shall correct the file-stamped date on the original opinion and issue corrected copies to all parties. A copy of this order will accompany the date corrected opinion copies. Hanlon, P.J.

Friday, October 2, 1998 (continued)

A081651 -- The People v. Airtio Romao Morales.

The judgment is affirmed. Poché, J. We concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

A082998 -- The People v. Elba Virgil Long, Jr.

The judgment is affirmed. Hanlon, P.J. We concur: Reardon, J., McGuiness, J. (Not for Publication.)

A083134 -- In re Elena K., a Person Coming Under the Juvenile Court Law.

Judgment affirmed. Reardon, J. We concur: Hanlon, P.J., McGuiness, J. (Not for Publication.)

DIVISION FIVE

A080000 -- The People v. David Eugene Portlock.

The judgment is affirmed. Haning, J. We concur: Jones, P.J., Champlin, J.*

*Judge of the Superior Court of Napa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution. (Not for Publication.)

A080389 -- The People v. Douglas Malveaux.

We affirm the judgment. Jones, P.J., We concur: Haning, J., Champlin, J.*

*Judge of the Superior Court of Napa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution. (Not for Publication.)

Friday, October 2, 1998 (continued)

A083360

A083361 -- John H., Starla C. v. Alameda County Superior Court, Alameda County Social Services, R.P.I.

By The Court: The consolidated petitions for extraordinary writ review and requests for stay of the section 366.26 hearing are denied on their merits. (Cal. Const., art. VI, § 14; rule 39.1B(o); *Kowis v. Howard* (1992) 3 Cal.4th 888.) Petitioners are barred in any subsequent appeal from making further challenges to the orders denying reunification services and setting a hearing under section 366.26. (Subd. (l).) Because the section 366.26 hearing is set for October 9, 1998, our decision is final as to this court immediately. (Rule 24(d).) Jones, P.J., Haning, J. and Stevens, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Monday, October 5, 1998

DIVISION ONE

A081626 -- Granite Management Corp. v. Lloyd's London, et al.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

DIVISION TWO

A082916 -- Earl Butler v. Workers' Compensation Appeals Board and Mission Foods.

The Court: The petition for writ of review is denied. Kline, P.J.

DIVISION FOUR

A079929 -- U.S. Rentals, Inc. v. Steve J. Robinson.

The judgment is reversed. Reardon, J. We concur: Hanlon, P.J., McGuiness, J. (Not for Publication.)

Monday, October 5, 1998 (continued)

A079025 -- The People v. James M. Moody.

The judgment is affirmed. Jones, Acting P.J. We concur: Haning, J., Champlin, J.*

*Judge of the Superior Court of Napa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution. (Not for Publication.)

A082557 -- The People v. Paul Robert Abbey II.

The judgment is affirmed. Haning, J. We concur: Jones, P.J., Stevens, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Tuesday, October 6, 1998

DIVISION ONE

A079838 -- Gregory Schultz et al. v. Hallenbeck & Associates, Inc.

The order confirming the arbitration award is affirmed. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

A080946 -- The People v. Abel Lopez Menera.

Accordingly, the judgment is affirmed. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

A082324 -- Cascade Forest Products, Inc. v. Workers' Compensation Appeals Board and William R. Hines.

The findings and award of December 9, 1997, are modified as follows. Finding number 13 and paragraph (e) of the award are reversed. In all other respects the findings, award and orders are affirmed. Costs to petitioner. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

DIVISION TWO

A077762 -- The People v. Andrew Sevey.

Defendant failed to demonstrate prejudice arising from any deficiencies of his trial counsel; therefore, the judgment is affirmed. Haerle, Acting P.J. We concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Tuesday, October 6, 1998 (continued)

A080140 -- David Rathjen et al. v. K & R Equipment, Inc.

The judgment is affirmed. Kline, P.J. We concur: Haerle, J., Ruvolo, J. (Not for Publication.)

A081196 -- In re Angelina and Serena V., Persons Coming Under the Juvenile Court Law.

The orders are affirmed. Kline, P.J. We concur: Haerle, J., Lambden, J. (Not for Publication.)

A081356 -- Redwoods Community College District v. Public Employment Relations Board of the State of California, California School Employees Association, R.P.I.

By The Court: The petition for writ of review is denied. Kline, P.J.

A084273 -- In re Terry Gordon, on Habeas Corpus.

By The Court: The petition for writ of habeas corpus is denied. Kline, P.J.

A084274 -- In re Terry Gordon, on Habeas Corpus.

By The Court: The petition for writ of habeas corpus is denied. Kline, P.J.

A084294 -- Daniel J. Popovich v. The Superior Court of Contra Costa County, Women's Workout & Weight-Loss Centers, Inc. et al., R.P.I.

By The Court: The petition for writ of mandate/prohibition/stay is denied. Haerle, Acting P.J.

Tuesday, October 6, 1998 (continued)

DIVISION FOUR

A081992 -- The People v. Shane Ray Sweat.

The judgment is affirmed. Hanlon, P.J. We concur: Poché, J., Reardon, J. (Not for Publication.)

DIVISION FIVE

A080773 -- Mary Devitt v. City of Burlingame.

The judgment is reversed. Champlin, J.* We concur: Jones, P.J., Haning, J.

*Judge of the Superior Court of Napa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution. (Not for Publication.)

MINUTES

COURT OF APPEAL
FIRST APPELLATE DISTRICT
STATE OF CALIFORNIA

Wednesday, October 7, 1998

DIVISION ONE

A079646 -- Dillingham Construction, N.A., Inc. v. State Board of Equalization.

The judgment is affirmed. The parties shall bear their own costs on appeal.

Swagger, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

DIVISION THREE

A079234 -- Betty Yu et al. v. Estate of Arnold J. Mandiberg, Deceased, et al.

We affirm. Costs on appeal to respondents. Phelan, P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

A080227 -- Lauderdale Associates v. Department of Health Services et al.

Affirmed. Alhambra to recover costs on appeal. Walker, J. We concur: Phelan, P.J., Parrilli, J. (Certified for Publication.)

A080281 -- Ronald Chang v. Albert Ghan, as Cotrustee, etc., et al.

The order denying Chang's motion for attorney fees is reversed. Having already determined Chang was the prevailing party in this action, on remand the trial court is to determine a reasonable amount to award Chang as attorney fees. Costs on appeal are awarded to Chang. Walker, J. We concur: Phelan, P.J., Parrilli, J. (Not for Publication.)

Wednesday, October 7, 1998 (continued)

A080506 -- Fred Grange v. John S. Dupen et al.

The judgment is affirmed. Costs to respondents. Corrigan, J. We concur: Phelan, P.J., Walker, J. (Not for Publication.)

A080584 -- Thomas G. Paulson II et al. v. William A. Lange III.

We hold that attorney fees in this action were not authorized by the R&A. The trial court's order awarding \$28,331.66 as attorney fees to Paulson under that agreement is reversed. Because we reverse on this basis, we do not consider appellant's remaining arguments. Respondents' request for sanctions is denied. Appellant to recover costs on appeal. Walker, J. We concur: Phelan, P.J., Corrigan, J. (Not for Publication.)

A080893 -- The People v. Gary Dwayne Simpson.

The judgment is affirmed. Phelan, P.J. We concur: Corrigan, J., Walker, J. (Not for Publication.)

A080907 --The People v. Melanie Shireen Graves.

The judgment is affirmed. Phelan, P.J. We concur: Corrigan, J., Walker, J. (Not for Publication.)

DIVISION FOUR

A080589 -- The People v. Theron Nicardo Sisk.

The judgment is affirmed. Reardon, J. We concur: Hanlon, P.J., McGuinness, J. (Not for Publication.)

Wednesday, October 7, 1998 (continued)

A081201 -- In re Kevin G., a Person Coming Under the Juvenile Court Law.

The jurisdictional order and the dispositional order are affirmed. Poché, J. We concur: Hanlon, P.J., McGuiness, J. (Not for Publication.)

DIVISION FIVE

A080539 -- The People v. Richard Kay Scott.

The order revoking probation is affirmed. Champlin, J.* We concur: Jones, P.J., Haning, J. *Judge of the Superior Court of Napa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, October 8, 1998

DIVISION ONE

A079892 -- Ronald M. Toran, as Administrator, etc. v. City and County of San Francisco.

The trial court correctly granted summary judgment on the ground of collateral estoppel. The judgment is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

A080238 -- The People v. John Villegas.

The judgment is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

A080646 -- The People v. Frederick Marc Cooley.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

A080759 -- The People v. Keith Leland Henderson.

The finding that appellant served a prior prison term pursuant to Penal Code section 667.5, subdivision (b) for the 1989 drug conviction is stricken. The judgment is modified to strike one of the prior prison term enhancements but is otherwise affirmed. Appellant's aggregate sentence is 11 years. The clerk of the superior court shall modify the abstract of judgment in accordance with this opinion and transmit a corrected copy to the Department of Corrections. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

Thursday, October 8, 1998 (continued)

A081232 -- In re Douglas J. Winston, on Habeas Corpus.

The order is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

A081756 -- Estate of Hubert J. Klaffki, Deceased.

May Merry Klaffki v. Ursula P. Just.

The order is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

DIVISION TWO

A081018 -- John E. Hallgren, et al. v. E&A Plumbing, Inc., et al.

The appeal is dismissed. Haerle, Acting P.J. We concur: Lambden, J., Ruvolo, J. (Not for Publication.)

DIVISION THREE

A080783 -- Robert M. Sherman et al. v. Seton Medical Center.

The judgment is affirmed. The parties to bear their own costs. Corrigan, J. We concur: Phelan, P.J., Parrilli, J. (Not for Publication.)

Thursday, October 8, 1998 (continued)

DIVISION FIVE

A079497 -- The People v. Clay Ezekiel Bradfield.

The judgment of conviction is affirmed. Champlin, J.* We concur: Jones, P.J., Haning, J. *Judge of the Superior Court of Napa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Friday, October 9, 1998

DIVISION ONE

A077982 -- The People v. Dennis Brian Anderson.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

A080346 -- The People v. Jorge Nahum Escutia Mendoza.

The trial court sentenced appellant to a total unstayed determinate term of seven years plus a life term, without eligibility for release on parole for 15 years. The abstract of judgment incorrectly states that the life term was without possibility of parole. We direct the trial court to modify the abstract of judgment to correct that clerical error and to forward a copy of the modified abstract of judgment to the Department of Corrections. We affirm the judgment as modified. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

A080899 -- The People v. Antonio Parnell McCormick.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

A082152 -- The People v. James E. Ely.

The appeal is dismissed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

Friday, October 9, 1998 (continued)

DIVISION THREE

A081991 -- The People v. Loc Hou Huynh.

We agree with appellate counsel that there are no arguable issues, and affirm the judgment. Parrilli, J. We concur: Phelan, P.J., Walker, J. (Not for Publication.)

A083389 -- Aaron J. v. The Superior Court of the County of Contra Costa, Contra Costa County Department of Social Services.

The petition for extraordinary relief is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The section 366.26 hearing is set for October 13, 1998, and our decision is final in this court immediately. Corrigan, Acting P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

DIVISION FIVE

A078314 -- The People v. Harold Ardell Dyer.

Appellant's conviction is affirmed. The matter is remanded to the trial court for resentencing consistent with this opinion. Jones, P.J. We concur: Haning, J., Champlin, J.* *Judge of the Superior Court of Napa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Tuesday, October 13, 1998

DIVISION ONE

A077295 -- The People v. Jose Antonio Negrete.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

A079859 -- The People v. Jose Navarro Yniquez.

There was insufficient evidence to support either of the instructions urged by appellant. The judgment is affirmed. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

A080331 -- The People v. Shango J. Greer.

The concurrent three-year term imposed for count three is hereby stayed. In all other respects, the judgment is affirmed. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

A081074 -- In re Keith B., a Person Coming Under the Juvenile Court Law.

The judgment is affirmed. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

A081703 -- Rayford Bullock v. State Compensation Insurance Fund.

Appellant is unable to state a cause of action based on State Fund's suppression or destruction of the certified mail records. The judgment is affirmed. Marchiano, J. We concur: Strankman, P.J., Stein, J.

Tuesday, October 13, 1998 (continued)

A081745 -- In re Edward Lee D., a Minor.

The orders appealed from are affirmed. Marchiano, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

DIVISION TWO

A080202 -- The People v. Jesus Lua.

We affirm the judgment. Lambden, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

A080816 -- Gloria Delia Alemany v. Robert Kevin Smith.

The September 24, 1997, restraining order is vacated and the cause remanded to the superior court. Each party is to bear their own costs on appeal. Haerle, Acting P.J. We concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A083877 -- County of San Mateo v. Workers' Compensation Appeals Board and Carolyn Hollins.

The Court: The petition for writ of review is denied. Kline, P.J.

A084063 -- Judy L. Hall v. Workers Compensation Appeals Board and Humboldt County Association for Retarded Citizens.

The Court: The petition for writ of review is denied. Kline, P.J.

A084352 -- Earl Foster v. The Superior Court of Contra Costa County, The People of the State of California, R.P.I.

By The Court: The petition for writ of mandate is denied. Kline, P.J.

Tuesday, October 13, 1998 (continued)

DIVISION FIVE

A079180 -- In re the Matter of Vincent T., a Minor.

The orders of the juvenile court are affirmed. Champlin, J.* We concur: Jones, P.J., Haning, J. *Judge of the Superior Court of Napa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution. (Not for Publication.)

A082536 -- The People v. James Cecil Upton.

The trial court's orders are affirmed. Stevens, J. We concur: Jones, P.J., Haning, J. (Not for Publication.)

A078831 -- In re the Matter of Marion M., a Minor.

The disposition is affirmed. Champlin, J.* We concur: Jones, P.J., Haning, J. *Judge of the Superior Court of Napa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution. (Not for Publication.)

Courtroom Minutes
Division 4
Tuesday October 13, 1998

Court convened at 9:30 a.m. in its courtroom at 303-2nd Street, 4th Floor, San Francisco. Present: Hanlon, P.J., Poche, J. and Reardon, J.; Channing Hoo, Deputy Clerk and CHP Officer Terry Tracy, Bailiff.

- A078669 Terry Martin et al.
 v.
 Richard Sipos et al.
Cause called. Pro per appellant Audrie Martin, who had requested oral argument, submitted on the briefs. Melanie Piech, counsel for respondents, likewise submitted on the briefs. Cause ordered submitted.
- A071347 Audrie Martin et al.
 v.
 Southern Pacific Transportation Co.
Cause called. Pro per appellant Terry Martin argued. Thomas H. Keeling, counsel for respondent, submitted on the briefs. Cause ordered submitted.
- A071344 Christopher P. Bonner et al.
 v.
 Southern Pacific Transportation Co.
Cause called. Pro per appellant Chris P. Bonner argued. Thomas H. Keeling, counsel for respondent, submitted on the briefs. Cause ordered submitted.
- A071345 Elaine Payton et al.
 v.
 Southern Pacific Transportation Co.
Cause called. Pro per appellant Elaine Payton argued. Thomas H. Keeling, counsel for respondent, submitted on the briefs. Cause ordered submitted.
- A083142 Audrey Hung et al.
 v.
 Superior Court, San Francisco County
 Kenneth So et al.
Cause called and argued by Richard Simons, counsel for petitioners Hung et al., and by Marq Bautista, counsel for real parties in interest. Cause ordered submitted.

A077577 Gordon Gee et al.
v.
American Realty & Construction, Inc. et al.
Cause called and argued by Bradley Kass, counsel for appellants Gee et al., and
by Mattaniah Eytan, counsel for respondents. Cause ordered submitted.

At this point, the court reconstituted itself to include Hanlon, P.J., Reardon, J.
and McGuinness, J.

A081250 Ralph Harding
v.
Owens Corning Fiberglas Corporation
Cause called and argued by Thomas Peterson, counsel for appellant Owens, and
by Philip Harley, counsel for respondent. Cause ordered submitted.

A076882 Richard F. Evangelho et al.
A077532 v.
Darlene T. Presoto
Causes called and argued by Keith Bartel, counsel for appellant Presoto, and by
Michael Serratto, counsel for respondent. Causes ordered submitted.

The Court recessed at 11:27 a.m.

Courtroom Minutes
Division 4
Tuesday October 13, 1998

Court reconvened at 2:00 p.m. Present: Hanlon, P.J., Reardon, J. and McGuiness;
Channing Hoo, Deputy Clerk and CHP Officer CJ Espinosa, Bailiff.

- A078860 County of Mendocino
v.
Phillip W. Wasson et al.
Cause called and argued by Frank Zotter, counsel for appellant County, and by Tom Johnson, counsel for respondents. Cause ordered submitted.
- A079090 In re Correy L., a minor.
People
v.
Correy L.
Cause called and argued by Jo Lambert, counsel for appellant Correy L., and by Ronald Niver, counsel for respondent. Cause ordered submitted.
- At this point, the court reconstituted itself to include Hanlon, P.J., Poche, J. and McGuiness, J.
- A076971 Bruce A. Losee
v.
Chevron Corporation et al.
Cause called and argued by Niloufar Mazhari, counsel for appellant Losee, and by Joseph P. Mascovich, counsel for respondents. Cause ordered submitted.
- At this point, the court reconstituted itself to include Poche, Acting P.J., Reardon, J. and McGuiness, J.
- A081940 In re Jerome Houston on Habeas Corpus
A078605 People v. Jerome Houston
Causes called and argued by James F. Johnson, counsel for petitioner/appellant Houston, and by David Rose, counsel for respondent. Causes ordered submitted.
- A076645 People v. Anthony Charles Renn
A083353 In re Anthony Charles Renn on Habeas Corpus
Causes called and argued by Scott Sugarman, counsel for appellant/petitioner Renn, and by Thomas A. Brady, counsel for respondent. Causes ordered submitted.

A081089

Terrance L. Blazona

v.

Robert Bruce

Cause called and argued by Steve M. Morger, counsel for appellant Bruce, and by Andrew H. Wilson, counsel for respondent. Cause ordered submitted.

The Court adjourned at 4:15 p.m.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Wednesday, October 14, 1998

DIVISION ONE

A081778 -- The People of the State of California v. Vincent Carl Camper.

By The Court: The above-entitled appeal is ordered transferred from Division Four to Division One. Division One has requested that this appeal be transferred to it for review and consideration simultaneously with the appeal in A082147, People vs. Michael Black. This order is made pursuant to Rule 20(b)(1) of the California Rules of Court. Strankman, Administrative Presiding Justice.

DIVISION TWO

A084408 -- Stevan Theodore Jenson v. The Superior Court of Lake County, The People of the State of California, R.P.I.

By The Court: The petition for writ of mandate/stay is denied. Kline, P.J.

A084411 -- Frank Carl Burrows, Jr. v. The Superior Court of Lake County, The People of the State of California, R.P.I.

By The Court: The petition for writ of mandate/stay is denied. Kline, P.J.

A084412 -- Joshua Little Burrows v. The Superior Court of Lake County, The People of the State of California, R.P.I.

By The Court: The petition for writ of mandate/stay is denied. Kline, P.J.

Wednesday, October 14, 1998 (continued)

DIVISION THREE

A071727 -- Gerald S. Cohen v. Harman-Menlo Park, Inc., et al.

The judgment is affirmed. Respondents shall recover their costs on appeal.
Parrilli, J. We concur: Corrigan, Actg. P.J., Walker, J. (Not for Publication.)

A082126 -- In re the Marriage of Dianne Huntsberry and Henry Huntsberry.

The judgment is affirmed. Parrilli, J. We concur: Phelan, P.J., Walker, J. (Not for Publication.)

A080080 -- The People v. Gerardo Diaz.

A082183 -- In re Gerardo Diaz, On Habeas Corpus.

The judgment is affirmed and the petition for writ of habeas corpus is denied.
Parrilli, J. We concur: Corrigan, Actg. P.J., Walker, J. (Not for Publication.)

A084244 -- The People of the State of California v. Keith R.

By The Court: The above-entitled appeal is ordered transferred from Division Two to Division Three. Co-defendant's appeal, People v. Jamar L. (A084176), was previously filed in Division Three of this Court, which by this court's Internal Operating Practices and Procedures, Section 21(b), requires a transfer of this case to Division Three. This order is made pursuant to Rule 20(b)(1) of the California Rules of Court.
Strankman, Administrative Presiding Justice.

Wednesday, October 14, 1998 (continued)

DIVISION FOUR

A078653 -- The People v. Mack Craig, Jr.

Order Modifying Opinion; The Court: It is ordered that the opinion filed herein on September 30, 1998, be modified in the following particulars: (See Order.)

This modification does not effect a change in the judgment. Hanlon, P.J.
(Certified for Publication.)

A081547 -- In re Josean S., a Person Coming Under the Juvenile Court Law.

The dispositional order is affirmed. Hanlon, P.J. We concur: Poche, J., Reardon, J. (Not for Publication.)

DIVISION FIVE

A082078 -- Amelia Kressler et al. v. John A. Troup.

By The Court: It is ordered that the opinion filed herein on September 14, 1998, reported at 66 Cal.App.4th 796 of the California Official Reports, be modified as follows: (See Order.)

The petition for rehearing is denied. This order does not effect a change in the judgment. Jones, P.J. (Certified for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Wednesday, October 14, 1998

The Court met at 9:30 a.m. in its courtroom at 303 - Second Street, 4th Floor, San Francisco. Present: Kline, P.J., Haerle, J., Lambden, J., and S. Graham, Deputy Clerk.

A077450 The People
 v.
 Kim Harold Burnett
Cause called and argued by Carol Strickman, counsel for appellant and Linda Murphy, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A081726 CC-California Plaza Associates
 v.
 Paller & Goldstein
Cause called and argued by David Sidran, counsel for appellant and Richard Bowles, counsel for respondent. Cause ordered submitted.

A073557 Jack Schleifer, et al.
A072929 v.
A074516 Norman I. Krug
A075734 Causes called and argued by Charles Morgan, counsel for appellants and
A078643 Donald Drummond, counsel for respondents. Submission deferred 45 days
A078818 for filing of a stipulation/motion to augment and supplemental letter briefs.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Haerle, acting, P. J., Lambden, J., Ruvolo, J. and S. Graham, Deputy Clerk.

A077095 The People
 v.

Perry J., a Minor
Cause called and argued by Jeffrey Schafer, counsel for appellant and John Vance, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A075128 Muriel J. Bell, et al.,
v.
First American Title Insurance Company
Cause called and argued by James Sturdevant, counsel for appellants and Lawrence Lieberman, counsel for respondent. Cause ordered submitted.

A081380 Estate of Bette N. Stanton, Deceased.
Gary Stanton
v.
Anne Clarke, etc.
San Francisco Society for the Prevention
of Cruelty to Animals
Cause called and argued by Marlin Stapleton, counsel for appellant and Jesus Roman, counsel for respondent. Cause ordered submitted.

A081094 Grossmont Hospital District
v.
S. Kimberly Belshe, etc.
Cause called and argued by Asher Rubin, Deputy Attorney General, counsel for appellant and Douglas Cumming, counsel for respondent. Cause ordered submitted.

A080586 The People
v.
David Pacheco
Cause called and argued by Eric Liberman, counsel for appellant and David Salmon, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

Court recessed until Thursday, October 15, 1998 at 9:30 a.m.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, October 15, 1998

DIVISION ONE

A081523 -- Kia Chevalier v. Department of Motor Vehicles.

Accordingly, we affirm the judgment. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

DIVISION THREE

A082970 -- Barry Black v. County of Sonoma.

An appeal may be taken when consent to judgment is given merely to facilitate an appeal following an adverse determination on a critical issue. (*Building Industry Assn. v. City of Camarillo* (1986) 41 Cal.3d 810, 817; *Tudor Ranches, Inc. v. State Comp. Ins. Fund* (1998) 65 Cal.App.4th 1422, 1428-1430; *Edwards v. Centex Real Estate Corp.* (1997) 53 Cal.App.4th 15, 26; *County of San Bernardino v. Pacific Indemnity Co.* (1997) 56 Cal.App.4th 666, 677-678.) If appellant is convinced that no further proceedings in the trial court on the first and second causes of action are appropriate, he may wish to permit judgment to be entered in favor of respondent on the entire action, and then appeal from that judgment. Until a judgment is entered resolving all causes of action, however, the appeal is premature. Respondent's motion for dismissal of the appeal is therefore granted. Phelan, P.J. We concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Thursday, October 15, 1998 (continued)

DIVISION FIVE

A081079 -- In re the Matter of Joaquin G., a Minor.

The order of the juvenile court is affirmed. Champlin, J.* We concur: Jones, P.J., Haning, J.

*Judge of the Superior Court of Napa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Thursday, October 15, 1998

The Court met at 9:30 a.m. in its courtroom at 303 - Second Street, 4th Floor, San Francisco. Present: Kline, P.J., Haerle, J., Ruvolo, J. and S. Graham, Deputy Clerk.

A076980 The People,
 v.
 Dwight McCullough
Cause called and argued by Mark D. Greenberg, counsel for appellant, and
Deputy Attorney General, Catherine Rivlin, counsel for respondent. Cause
ordered submitted.

Court recessed until Friday, October 16, 1998 at 9:30 a.m.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Friday, October 16, 1998

DIVISION ONE

A080083 -- The People v. Steve Law.

Accordingly, the judgment is affirmed. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

DIVISION TWO

A080998 -- In re Grant Landon T., a Person Coming Under the Juvenile Court Law.

The judgment is affirmed. Haerle, J. We concur: Kline, P.J., Lambden, J. (Not for Publication.)

DIVISION THREE

A079078 -- Don Gible et al. v. Car-Lene Research, Inc.

For all the foregoing reasons, the judgment of the trial court is reversed. Costs to appellants. Phelan, P.J., We concur: Corrigan, J., Walker, J. (Certified for Publication.)

A080097 -- In re Ariel B., a Person Coming Under the Juvenile Court Law.

The judgment is affirmed. Parrilli, J. We concur: Corrigan, Actg. P.J., Walker, J. (Not for Publication.)

Friday, October 16, 1998 (continued)

DIVISION FOUR

A083142 -- Audrey Hung, a Minor, etc. v. Superior Court of the City and County of San Francisco.

Wendy Hung v. Superior Court of the City and County of San Francisco, Kenneth C. So, D.C., et al., R.P.I.

Let a peremptory writ of mandate issue directing the respondent superior court to set aside and vacate its order of June 11, 1998, granting Dr. So's motion to vacate abandonment of his appeals. Reardon, J. We concur: Hanlon, P.J., Poché, J. (Not for Publication.)

DIVISION FIVE

A079671 -- Robert Half International, Inc., v. Franchise Tax Board.

The petition for rehearing is denied.

The opinion filed on September 21, 1998, is modified at page 5, line 2, at the end of the sentence which reads "within the meaning of the functional test set forth in section 25120, subdivision (a)" by adding the following footnote: (See Modification.)

The remaining footnotes are to be renumbered accordingly.

This order does not effect a change in the judgment. Jones, P.J. (Certified for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Friday, October 16, 1998

The Court met at 9:30 a.m. in its courtroom at 303 - Second Street, 4th Floor, San Francisco. Present: Kline, P.J., Lambden, J., Ruvolo, J. and I. Santos, Deputy Clerk.

- A079900 The People,
 v.
 Joseph Togiai King II.
Cause called and argued by Eileen Kotler, counsel for appellant, and Ann Jensen, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A082619 In re David B. Denison on Habeas Corpus.
Cause called and argued by Alan Siraco, counsel for appellant, and Gregory Ott, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A078775 William F. Marweg,
 v.
 Retirement Board of the City and County of San Francisco.
Cause called and argued by Dan Maguire, counsel for appellant, and Michael Hebel, counsel for respondent. Cause ordered submitted.
- At this point of the proceeding, Justice Lambden left the bench and Justice Haerle joined the bench for the remainder of the cases.
- A078486 Susanna Toigo et al.,
 v.
 Town of Ross et al.
Cause called and argued by Clayton Clement, counsel for appellant, and Susannah French, counsel for respondent. Cause ordered submitted.
- A080279 Don Anderson et al.,
 v.
 Safeway, Inc.
Cause called and argued by Philip Horowitz, counsel for appellant, and

Linda Inscoe, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, J., Haerle, J., Lambden, J., and I. Santos, Deputy Clerk.

A081087 Jane Lindstrom,
v.
Richard Gabel et al.
Cause called and argued by Richard Gabel, in pro per, and Gregory Kasten, counsel for respondent. Submission deferred pending letter briefs from both parties due within 5 days.

A080800 Myrtle Paetz et al.,
v.
Allstate Insurance Company.
Cause called and argued by Kelly Valen, counsel for appellant, and Barry Wester, counsel for respondent. Cause ordered submitted.

A078323 Dustin Phillip Smyth et al.,
v.
Flightcraft, Inc.
Cause called and argued by Louis Franecke, counsel for appellant, and Stephen Nelson, counsel for respondent. Cause ordered submitted.

A079653 Barbara Westover et al.,
v.
Oregon Mutual Insurance Company.
Cause called and argued by Roger Sleight, counsel for appellant, and Andrew Chang, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Monday, October 19, 1998

DIVISION TWO

A081294 -- The People v. Edward L. Martinez.

The judgment is affirmed. Kline, P.J. We concur: Haerle, J., Ruvolo, J. (Not for Publication.)

A082884 -- The People v. Raul Pino.

The judgment is affirmed. Ruvolo, J. We concur: Kline, P.J., Lambden, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Tuesday, October 20, 1998

DIVISION ONE

A077997 -- Robert Etter, Jr. v. Veriflo Corporation.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Swager, J.
(Certified for Publication.)

A080636 -- Max Martinez et al. v. Nasser Ghanaat et al.

The judgment and award of attorney fees are affirmed. Respondents/Sellers are entitled to costs on appeal. Each party shall bear their own attorney fees on appeal. Strankman, P.J. We concur: Stein, J., Marchiano, J. (Not for Publication.)

A080799 -- In re the Marriage of David H. Townsend and Sylvia F. Townsend.

The order denying appellant Wife's motion for relief from the default judgment is reversed. The judgment filed on September 9, 1996 is vacated, except as to termination of marital status. On remand, the trial court shall divide the community estate of the parties equally. (Fam. Code § 2550.) Appellant Wife shall recover costs on appeal. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

DIVISION TWO

A084019 -- Coastal West Ventures, Inc., et al. v. The Superior Court of Alameda County, George Straggas, R.P.I.

By The Court: The petition for writ of mandate is denied. Kline, P.J.

Tuesday, October 20, 1998 (continued)

A084073 -- City of Oakland, et al. v. The Superior Court of Alameda County, Zuhayr Nizam-Aldine, et al., R.P.I.

By The Court: The petition for writ of mandate/prohibition is denied. Kline, P.J.

A084390 -- Mounir Kaddoura v. The Superior Court of San Mateo County, Howard E. Hinman, R.P.I.

By The Court: The petition for writ of prohibition/mandate/stay is denied. (Code Civ. Proc., § 170.3, subd. (d).) Kline, P.J.

DIVISION FOUR

A076971 -- Bruce A. Losee v. Chevron Corporation et al.

The judgment is ordered amended to reflect a reduction in costs awarded to respondents in the sum of \$1,423.30 (\$21 in Federal Express charges, \$335 in expert witness fees, and \$1,067.30 in related costs). In all other respects the judgment is affirmed. Appellant to bear costs of appeal. McGuiness, J. We concur: Hanlon, P.J., Poché, J. (Not for Publication.)

A077577 -- Gordon Gee et al. v. American Realty & Construction, Inc., et al.

The ensuing order for attorney fees is predicated upon the existence of a judgment. With that predicate removed, the dependent fee order must suffer the same fate.

The judgment and order are reversed. Plaintiffs shall recover their costs of appeal. Poché, J. We concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

A078605 -- The People v. Jerome Houston.

Judgment affirmed. Reardon, J. We concur: Poché, Acting P.J., McGuiness, J. (Not for Publication.)

Tuesday, October 20, 1998 (continued)

A079090 -- In re Correy L., a Person Coming Under the Juvenile Court Law.

The dispositional order is affirmed. Hanlon, P.J. We concur: Reardon, J., McGuinness, J. (Not for Publication.)

A081089 -- Terrance L. Blazona v. Robert Bruce.

On this appeal from a judgment after the denial of a motion for a new trial, we conclude on the basis of our independent review of the entire record that there was prejudicial error in the conduct of the trial requiring reversal of the jury verdict and judgment on the cause of action for breach of the implied covenant of good faith and fair dealing. (*City of Los Angeles v. Decker, supra*, 18 Cal.3d at pp. 871-872.) The judgment on this cause of action is therefore reversed and remanded with instructions to the trial court to enter judgment in favor of defendant and appellant Bruce. On remand, the trial court shall determine the proper amount of reasonable attorney fees to be awarded Bruce as prevailing party. In all other respects, the judgment is affirmed. McGuinness, J. We concur: Poché, Acting P.J., Reardon, J. (Not for Publication.)

A081940 -- In re Jerome Houston on Habeas Corpus.

The petition for writ of habeas corpus is granted and the finding of true on the 1988 Texas burglary as a strike (§ 667, subd. (d)) is set aside. The cause is remanded to the trial court for resentencing. If the prosecuting attorney elects to retry the strike allegation (*Monge v. California* (1998) ___ U.S. ___ [118 S.Ct. 2246]; *People v. Monge* (1997) 16 Cal.4th 826, 845), it must do so within 60 days of the filing of our remittitur. Reardon, J. We concur: Poché, Acting P.J., McGuinness, J. (Not for Publication.)

A082796 -- In re Willie A., a Person Coming Under the Juvenile Court Law.

Accordingly, we find no arguable issues for review within *People v. Wende, supra*, 25 Cal.3d 436.

The judgment is affirmed. McGuinness, J. We concur: Hanlon, P.J., Poché, J. (Not for Publication.)

Tuesday, October 20, 1998 (continued)

DIVISION FIVE

A078375 -- The People v. Donovan Dewayne Hokett.

The judgment is affirmed. Champlin, J.* We concur: Jones, P.J., Haning, J.

*Judge of the Superior Court of Napa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Tuesday, October 20, 1998

Court convened at 9:00 a.m.. in its Courtroom at 303 Second Street, Marathon Plaza, South Tower, Fourth Floor, San Francisco, California.

Present: Phelan, P.J., Corrigan, J., Walker, J., and J. Casados, Deputy Clerk.

A079613 The People,
 v.
 Danny Lee Martin.
Cause called and argued by Ann Moorman, counsel for appellant, and Pam Critchfield, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A077626 Richard Erchinger,
 v.
 Jeff Heier.
Cause called and argued by Glen Moss, counsel for appellant, and John R. Pasto, counsel for respondent. Cause ordered submitted.

A076346 Charles Brusman et al.,
 v.
 City and County of San Francisco et al.
Cause called and argued by Andrea A. Brett, counsel for appellants, and Margaret W. Baumgartner, Deputy City Attorney, and Richard G. Tullis, Deputy Attorney General, counsel for respondents. Cause ordered submitted.

Justice Parrilli took her place on the bench.

A083009 Marsh and McClennon et al.,
 v.
 Superior Court of San Francisco County;
 Christine Pacifico-Paul.
Cause called. The cause continued to the 1:30 p.m. calendar.

Justice Corrigan left the bench.

- A077791 The People,
 v.
 Freddie Elrod.
Cause called and argued by George L. Schraer, counsel for appellant, by
telephone conference and by Thomas A. Brady, Deputy Attorney General,
counsel for respondent. Cause ordered submitted.
- A078076 James Moody,
 v.
 Owens-Corning.
Cause called and argued by Brett Schuman, counsel for appellant, and by
Phil Harley, counsel for respondent. Cause ordered submitted.
- A078286 Elke Schlosser,
 v.
 Town of Woodside et al.
Cause called and argued by John Keating, counsel for appellant, and Jean
Savaree, counsel for respondents. Cause ordered submitted.
- Court recessed until 1:30 p.m.

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Tuesday, October 20, 1998

Court reconvened at 1:30 p.m. in its Courtroom at 303 Second Street, Marathon Plaza, South Tower, Fourth Floor, San Francisco, California.

Present: Phelan, P.J., Corrigan, J., Parrilli, J. Walker, J., and C. Turner, Deputy Clerk.

Justice Phelan announced he would not be participating on the following case.

A079385 In re Antonio S.,
 The People,
 v.
 Antonio S.,
Cause called and argued by James R. Colgan, counsel for appellant, and Sharon Wooden, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

Justice Walker left the bench.

A083009 Marsh and McClennan et al.,
 v.
 Superior Court of San Francisco,
 Christine Pacificio-Paul,
Cause called. Richard H. Rahm appeared for petitioner and Robert Mitchell counsel for real party in interest did not appear. Cause ordered submitted.

A078869 Maria Louie, et al.,
 v.
 Hayman Homes, Inc., et al.,
Cause called and argued by Steven H. Bovarnick, counsel for appellant, and Martin T. Synder and Joel Halveron, counsel for respondents. Cause ordered submitted.

A077553 Otis McPeters,
v.
Al Norman,
Cause called and argued by Robert Vallandigham, counsel for appellant,
and Gregory M. Haynes, counsel for respondent. Cause ordered submitted.

court adjourned

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Wednesday, October 21, 1998

DIVISION ONE

A079562 -- In re Jessica M. and Melissa M., Persons Coming Under the Juvenile Court Law.

Accordingly, the judgment is affirmed.

The section 366.26 hearing is set for October 29, 1998. Therefore, our decision is final in this court immediately. (Cal. Rules of Court, rule 24(d).) Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

A083561 -- Susan Diane M. v. The Superior Court of Humboldt County, Humboldt County Department of Social Services, R.P.I.

Our review of the entire record, which we have summarized above, reveals that the mother made efforts to accomplish reunification. However, the evidence showed beyond any doubt that reunification could not be accomplished within the foreseeable future, if at all. The orders which the mother challenges are supported by substantial evidence. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1021.) The petitions for extraordinary writ are denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.)

The section 366.26 hearing is set for October 29, 1998. Therefore, our decision is final in this court immediately. (Cal. Rules of Court, rule 24(d).) Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

Wednesday, October 21, 1998 (continued)

DIVISION TWO

A078441 -- The People v. Ronald Eugene Mann.

The judgment is affirmed. Kline, P.J. We concur: Haerle, J., Ruvolo, J. (Not for Publication.)

A080882 -- In re Darnell C., a Person Coming Under the Juvenile Court Law.

The judgment is affirmed. Haerle, J. We concur: Kline, P.J., Lambden, J. (Not for Publication.)

A082115 -- Wells Fargo Bank, N.A. v. Wayne Lewis Lesser et al.

The order is affirmed. Lambden, J. We concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

A084349 -- David Anderson Williams v. The Superior Court of Contra Costa County, The People of the State of California, R.P.I.

By The Court: The petition for writ of mandate/prohibition is denied without prejudice. Petitioner has failed to provide a record adequate to permit review of the challenged ruling. (See *Sherwood v. Superior Court* (1979) 24 Cal.3d 183, 186-187; Cal. Rules of Court, rule 56, subd. (c).) Kline, P.J.

A084532 -- In re Donald Thompson on Habeas Corpus.

By The Court: The petition for writ of habeas corpus is denied. Kline, P.J.

A084547 -- Admiral Insurance Company v. The Superior Court of San Francisco County, Granite Management Corporation, R.P.I.

By The Court: The petition for writ of mandate/stay is denied. Kline, P.J.

Wednesday, October 21, 1998 (continued)

DIVISION THREE

A077471 -- Thomas Simpson, M.D. v. San Francisco Neonatology Medical Group et al.

The judgment is affirmed. The motion for sanctions is denied. Plaintiff to bear the parties' costs on appeal. Corrigan, J. We concur: Phelan, P.J., Walker, J. (Not for Publication.)

DIVISION FOUR

A084357 -- North Shuttle Service, Inc. v. California Public Utilities Commission.

North having failed to make an adequate showing of irreparable harm, the request for a stay is denied. Hanlon, P.J. Poché, J., McGuinness, J. (Certified for Publication.)

DIVISION FIVE

A082225 -- The People v. Pastor Carbajal Aguilar.

The order is affirmed. Jones, P.J. We concur: Haning, J., Stevens, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, October 22, 1998

DIVISION ONE

A079604 -- The People v. Stevon Smallwood.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

DIVISION TWO

A082538 -- The People v. Jose Moreno Solis.

The judgment is affirmed. Lambden, J. We concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A083234 -- The People v. Theodore Edward Wheeler.

A review of the record discloses no arguable issues for briefing. The judgment is affirmed. Lambden, J. We concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

Thursday, October 22, 1998 (continued)

DIVISION THREE

A076936 -- Nancy D. Lavelle v. Bankmerica Corporation, et al.

By The Court: Since the court's September 29, 1998 opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied.

Pursuant to rule 978(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. Phelan, P.J.

A078076 -- James Moody v. Owens Corning Corporation.

In refreshing style, Moody has conceded that if his claim of waiver fails, appellant's substantive point must prevail. He has provided us with a recalculation of appellant's liability under Proposition 51. In an equally refreshing manner, Owens Corning agrees with Moody's recalculation. Accordingly, we accept the recalculated figure as accurate and order the judgment against Owens Corning modified to reflect total damages against it in the amount of \$47,441.61. Each side to bear its own costs. Walker, J. We concur: Phelan, P.J., Parrilli, J. (Not for Publication.)

A079385 -- In re Antonio S., a Person Coming Under the Juvenile Court Law.

Affirmed. Walker, J. We concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

DIVISION FOUR

A080336 -- The People v. Carlos Escobar.

The judgment is affirmed. Poché, Acting P.J. We concur: Reardon, J., McGuinness, J. (Not for Publication.)

Thursday, October 22, 1998 (continued)

A081250 -- Ralph Harding v. Owens-Corning Fiberglas Corporation.

The parties agree that if, as we conclude, the Proposition 51 claim has not been waived and *Buttram* thus applies to this case, then Owens-Corning's net liability is \$82,849.90 plus costs and interests. The judgment is modified accordingly. The parties will bear their own costs on appeal. Reardon, J. We concur: Hanlon, P.J., McGuiness, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

DIVISION FIVE

Thursday, October 22, 1998

Court convened at 9:30 a.m. in its Courtroom at 303 Second Street, South Tower, Fourth Floor, San Francisco, California. Present: Jones, P.J.; Haning, J.; Stevens, J.; and Richard H. Sandvik, Deputy Clerk.

- A080885 Alexander M. Boyvich et al.
A081111 v.
 City of Oakland
 Cause called and argued by Martin T. Snyder, counsel for appellant, and by Allison Daniels, counsel for respondent. Cause ordered submitted.
- A083160 In re the Estate of Guy F. Coombs
 Mercedita C. Coombs
 v.
 David F. Coombs
 Cause called and argued by James C. Bridgman, counsel for appellant, and by Andrew Zabronsky, counsel for respondent. Cause ordered submitted.
- A081508 Larry L. Whiteside
 v.
 Berrett, Burke, Wilson, Castle, Daffin & Frappier, L.L.P.
 Cause called and argued by Daniel J. Mulligan, counsel for appellant, and by Lewis J. Soffer, counsel for respondent. Cause ordered submitted.

A080164 A081118	<p>Raja N. Samara et al. v. Marlin Cove, Inc., et al. Cause called and argued by Joseph W. Fairfield, counsel for appellant, and by Carl Lippenberger, counsel for respondent. Cause ordered continued to November 20, 1998, calendar.</p>
A081421	<p>Thaddeus Keiffer v. Bechtel Corporation Cause called and argued by Daniel R. Sovocool, counsel for appellant, and by Edwin L. Bradley, counsel for respondent. Cause ordered submitted.</p>
A081580	<p>Jerry A. Neal, Sr. v. Leon M. Urban et al. Cause called and argued by Jerry A. Neal, Sr., in pro per, and by J. Randolph Wallace and Andrew R. Adler, counsel for respondents. Cause ordered submitted.</p>
A079574	<p>Contra Costa Water District v. Thelma Souza Cause called and argued by Frederik A. Jacobsen, counsel for appellant, and by Jeffrey D. Polisner, counsel for respondent. Cause ordered submitted.</p>
A082978	<p>Environmental Protection Information Center, Inc., et al. v. California Department of Forestry and Fire Protection et al. Eel River Sawmills et al. Cause called and argued by Thomas N. Lippe, counsel for appellant, and by Michael W. Neville, counsel for respondent and David H. Dun, counsel for real parties in interest. Cause ordered submitted.</p>

A081293 The People
 v.
 Roger Samuel Barisdale
Cause called and argued by Philip McGough, counsel for appellant, and by
Jill M. Thayer, Deputy Attorney General, counsel for respondent. Cause
ordered submitted.

A079200 The People
 v.
 Sara Marie Slater
Cause called and argued by Chris Redburn, counsel for appellant, and by
George F. Hindall, III, Deputy Attorney General, counsel for respondent.
Cause ordered submitted.

A081010 In re the Estate of William McKinley
 Ruth W. Taylor
 v.
 Jacqueline Bradley
Cause called and argued by Jacqueline Bradley, counsel for appellant, and
by Walton M. Phillips, counsel for respondent. Cause ordered submitted.

Court adjourned at 3:08 p.m.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Friday, October 23, 1998

DIVISION ONE

A077303, A077304 -- The People v. Michael Jerome Powell.

We therefore conclude that Powell's sentence violates no constitutional standards.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

DIVISION TWO

A076980 -- The People v. Dwight McCullogh.

The judgment is affirmed. Kline, P.J. We concur: Haerle, J., Ruvolo, J. (Not for Publication.)

A079395 -- Gayle W. Turpen v. Mark Hickmott, D.D.S.

The judgment is hereby reversed. This case is remanded to the trial court for further proceedings in accordance with this opinion. Appellant shall recover her costs on appeal. Kline, P.J. We concur: Haerle, J., Ruvolo, J. (Not for Publication.)

A080756 -- The People v. Thomas W. Douglas.

The judgment is affirmed. Haerle, J. We concur: Kline, P.J., Lambden, J. (Not for Publication.)

Friday, October 23, 1998 (continued)

DIVISION FOUR

A071344 -- Christopher Bonner et al. v. Southern Pacific Transportation Company.

By The Court: The order is affirmed. Costs are not awarded. Hanlon, P.J., Poché, J., & Reardon, J. (Not for Publication.)

A071345 -- Elaine Payton et al. v. Southern Pacific Transportation Company.

By The Court: The order is affirmed. Costs are not awarded. Hanlon, P.J., Poché, J., & Reardon, J. (Not for Publication.)

A071347 -- Audrie Martin et al. v. Southern Pacific Transportation Company.

By The Court: The order is affirmed. Costs are not awarded. Hanlon, P.J., Poché, J. & Reardon, J. (Not for Publication.)

A078669 -- Terry Martin et al. v. Richard Sipos et al.

By The Court: The judgments of dismissal are affirmed. Respondents shall recover their costs. Hanlon, P.J., Poché, J., & Reardon, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Monday, October 26, 1998

DIVISION ONE

A080942 -- The People v. Charles Lamont Jackson.

The judgment is affirmed. Swager, J. We concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

A081365 -- In re Nicole K., a Person Coming Under the Juvenile Court Law.

The judgment is affirmed. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

A082009 -- The People v. Paul Henry Schmidt.

The judgment is affirmed. Swager, J. We concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

DIVISION THREE

A078286 -- Elke Schlosser v. Town of Woodside et al.

The judgment is affirmed. Walker, J. We concur: Phelan, P.J., Parrilli, J. (Not for Publication.)

A078668 -- Roger Ashkenazi and Arthur J. Lempert v. Andrea Palash et al.

The orders appealed from are affirmed. Costs to respondents. Corrigan, J. We concur: Phelan, P.J., Parrilli, J. (Not for Publication.)

Monday, October 26, 1998 (continued)

A080254 -- In re Danielle S., a Person Coming Under the Juvenile Court Law.

The disposition order is affirmed. Corrigan, Acting P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

A082166 -- The People v. Michael John McGlothin.

The order striking one of defendant's prior convictions is reversed as an abuse of discretion. We decline the Attorney General's invitation to dictate what sentence the trial court should impose. Should it choose to do so, the court may reconsider the question of defendant's priors and may exercise its discretion in a manner not inconsistent with this opinion and its own previous findings. The matter is remanded for resentencing and computation of appropriate custody credits. Corrigan, Acting P.J. We concur: Parrilli, J., Walker, J. (Certified for Publication.)

A082795 -- In re Justin O., a Person Coming Under the Juvenile Court Law.

The order of the juvenile court is affirmed. Corrigan, Acting P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

A084553 -- Garrettt Braida, et al. v. Superior Court, San Mateo County, Centrex Real Estate Corporation, R.P.I.

By The Court: The above-entitled case is ordered transferred from Division One to Division Three. This case has been consolidated in the San Mateo Superior Court with two actions previously decided by Division Three of this Court, A069770 and A073471, which by this court's Internal Operating Practices and Procedures, Section 21(b), requires a transfer of this case to Division Three. This order is made pursuant to Rule 20(b)(1) of the California Rules of Court. Strankman, Administrative Presiding Justice.

Monday, October 26, 1998 (continued)

DIVISION FOUR

A081711 -- Miriam L. Chu et al. v. Roy Bolton.

The judgment is affirmed. Reardon, J. We concur: Poché, Acting P.J.,
McGuiness, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Monday, October 26, 1998

The Court convened at 9:00 a.m. in its courtroom at 303 - 2nd Street, Fourth Floor, San Francisco. Present: Strankman, P.J., Stein, J., Swager, J. and N. Millner, Deputy Clerk.

A078386 The People,
 v.
 Randall Jay Nathan.
Cause called and argued by Ann Moorman, counsel for appellant, and Mark Howell, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A080082 In re Marriage of Gonzalez.
 Neomi Kamp Gonzalez,
 v.
 Manuel Gonzalez.
Cause called and argued by Linda Burrell, counsel for appellant, and Richard M. Marx, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Stein left the bench and Justice Marchiano joined the bench.

A080325 The People,
 v.
 Bobby Gene Gillis.
Cause called and argued by Laureen Anne Bethards, counsel for plaintiff, and Jill Thayer, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A080752 In re Happy K.
 Social Services Agency,
 v.
 Katharine K.
Cause called and argued by Konrad Lee, counsel for appellant, via teleconference, Donna Furth, counsel for the minor, and Anthony E. Scarr, Deputy County Counsel, counsel for respondent. Cause ordered submitted.

Court recessed until 2 p.m.

Court reconvened at 2:00 p.m. Present: Strankman, P.J., Stein, J., Swager, J. and N. Millner, Deputy Clerk.

A080278/
A081667 David Shapiro et al.,
v.
Park Bellevue Tower Associates
Cause called and argued by David Roth, counsel for appellants/respondents Shapiro et al., and Thomas McConnell, attorney for respondent/appellant Park Bellevue Tower Associates. Cause ordered submitted.

A080996 Bevilacqua & Schikore, Inc.,
v.
Paul Van Etten, et al.
Cause called and argued by E. Elizabeth Summers, counsel for appellant, and Patricia Rosenberg, counsel for respondent. Cause ordered submitted.

A079522 Jude Bullock,
v.
Occupational Health Services, Inc.
Cause called and argued by Jude Bullock, appellant in pro per, and Jeffrey Kurtok, counsel for respondent. Cause ordered submitted.

A074016 The People,
v.
Samuel Gardner Eldredge.
Cause called and argued by Gail R. Weinheimer, counsel for appellant, and Ron Niver, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Presiding Justice Strankman left the bench and Justice Marchiano joined the bench. Justice Stein became Acting Presiding Justice.

A080662 The People,
v.
Blanca Rubia Escobar.
Cause called and argued by L. Richard Braucher, counsel for appellant, and Moona Nandi, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

Court recessed until Wednesday, October 28, 1998 at 9:00 a.m.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Tuesday, October 27, 1998

DIVISION TWO

A079496 -- The People v. James Paul Belcher.

The judgment is affirmed. Kline, P.J. We concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A079900 -- The People v. Joseph Togiai King, II.

The judgment and the sentence imposed are affirmed. Ruvolo, J. We concur: Kline, P.J., Lambden, J. (Not for Publication.)

A081531 -- City of South San Francisco v. Josephine Anne Mayer, et al.

We affirm the judgment. Haerle, Acting P.J. We concur: Lambden, J., Ruvolo, J. (Not for Publication.)

DIVISION THREE

A079738 -- In re Antonio G., a Person Coming Under the Juvenile Court Law.

Affirmed. Walker, J. We concur: Phelan, P.J., Corrigan, J. (Not for Publication.)

Tuesday, October 27, 1998 (continued)

A081077 -- In re Felicia F. et al., Persons Coming Under the Juvenile Court Law.

For all the foregoing reasons, the jurisdictional and dispositional orders of the trial court are affirmed. Phelan, P.J. We concur: Corrigan, J., Parrilli, J. (Not for Publication.)

DIVISION FOUR

A083540 -- Al Umhofer v. Superior Court of California, County of San Mateo, Ernst Haemmerling, R.P.I.

We reach our decision after giving notice that we might act by issuing a peremptory writ in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.*, *supra*, 36 Cal.3d at pp.177-180.) Petitioner's right to relief is obvious, real party in interest has so conceded, and no purpose would be served by oral argument. (*Ng v. Superior Court* (1992) 4 Cal.4th 29, 35.)

The order of contempt filed August 11, 1998 is annulled. Let a peremptory writ of prohibition issue restraining the San Mateo Superior Court from enforcing its order finding petitioner in contempt of court, filed August 11, 1998. This opinion shall be final forthwith. (Cal. Rules of Court, rule 24(d).) Hanlon, P.J. We concur: Poché, J., McGuinness, J. (Not for Publication.)

Courtroom Minutes
Division 4
Tuesday, October 27, 1998

Court convened at 9:30 a.m. in its courtroom at 303-2nd Street, 4th Floor, San Francisco. Present: Hanlon, P.J., Poche, J. and Reardon, J.; Channing Hoo, Deputy Clerk and CHP Officer C. Espinosa, Bailiff.

A079747 Alternative Systems, Inc.

v.

Thomas P. Carey

Cause called. John Halley, counsel for appellant Alternative, argued by teleconferencing. John Blackman, counsel for respondent, argued in person. Cause ordered submitted.

At this point, the court reconstituted itself to include Hanlon, P.J., Poche, J. and McGuiness, J.

A079840 Empire Waste Management

v.

The Town of Windsor

Cause called and argued by Ezra Hendon, counsel for appellant Empire, and by Andrea Saltzman, counsel for respondent. Cause ordered submitted.

At this point, the court reconstituted itself to include Hanlon, P.J., Reardon, J. and McGuiness, J.

A075385 Mildred Valentine et al.

v.

Baxter Healthcare Corporation et al.

Cause called and argued by Salvador Liccardo, counsel for appellants Valentine et al., and by Thomas M. Peterson, counsel for respondents. Cause ordered submitted.

At this point, the court reconstituted itself to include Poche, Acting P.J., Reardon, J. and McGuiness, J.

A077897 Robert Pivirotto
v.
Bernard Belkin
Cause called and argued by Michael Coffino, counsel for appellant Belkin, and by David Cook, counsel for respondent. Cause ordered submitted.

A081624 Diane L. Sangster
v.
Tyler H. Paetkau et al.
Cause called and argued by Daniel H. Qualls, counsel for appellant Sangster, and by Karen Johnson-McKewan and Paul Scott, counsel for respondents. Cause ordered submitted.

The Court recessed at 12:19 p.m.

Courtroom Minutes
Division 4
Tuesday October 27, 1998

Court reconvened at 1:30 p.m. in its courtroom at 303-2nd Street, 4th Floor, San Francisco. Present: Hanlon, P.J., Poche, J., Reardon, J., Jim Campbell, Deputy Clerk and CHP Officer Terry Tracy, Bailiff.

A079808 People,
 respondent,
 v.
 Damani Collins,
 appellant.

Cause called. Randy Baker argued on behalf of appellant, Damani Collins. Gregory Ott, D.A.G., argued on behalf of respondent. Cause submitted.

A080153 In re Bobbi Ann W., a Minor..
 Social Services Agency,
 respondent,
 v.
 Brigitte A.,
 appellant.

A084009 In re Allred, on Habeas Corpus.

Causes called. Ann Vanderpool argued on behalf of appellant Brigitte A. Anthony Scarr, Dep. Co. Counsel, argued on behalf of respondent. Causes submitted.

The Court adjourned at 2:20 p.m.
The Court adjourned at 2:20 p.m.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Wednesday, October 28, 1998

DIVISION TWO

A077075 -- Michael Singsen et al. v. Television Signal Corporation et al.

The judgment is affirmed. The parties are to pay their own costs on appeal.
Lambden, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

A080391 -- The People v. Stephen Crump.

The judgment is reversed. Haerle, J. We concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A081414 -- The People v. Itaska Gatlin.

The judgment is affirmed. Haerle, J. We concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A081398 -- Johann Lotz et al. v. Farmers Insurance Group.

The judgment is affirmed. Lambden, J. We concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

A081583 -- The People v. George Eugene Dixon, Jr.

The judgment is affirmed. Haerle, Acting P.J. We concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Wednesday, October 28, 1998 (continued)

DIVISION THREE

A079928 -- Susan Marie Demartini v. The Mechanics Bank et al.

The judgment is reversed. The matter is remanded to the trial court with instructions to vacate its order and enter a new order (1) sustaining the demurrer as to the cause of action for false imprisonment with leave to amend, and (2) overruling the demurrer as to the cause of action for intentional infliction of emotional distress. Corrigan, Acting P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

DIVISION FOUR

A080607 -- The People v. Benjamin Rios Barragon.

We affirm the judgment of conviction. Reardon, J. We concur: Hanlon, P.J., McGuinness, J. (Not for Publication.)

A080905 -- The People v. Lewis Love.

The judgment of conviction is affirmed. Poché, Acting P.J. We concur: Reardon, J., McGuinness, J. (Not for Publication.)

A083240 -- The People v. Hector Nathan Hale, Jr.

Judgment affirmed. Reardon, J. We concur: Poché, Acting P.J., McGuinness, J. (Not for Publication.)

Wednesday, October 28, 1998 (continued)

DIVISION FIVE

A080734 -- The People v. Jeray Lamont Williams.

The judgment is affirmed. Champlin, J.* We concur: Jones, P.J., Haning, J.

*Judge of the Superior Court of Napa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Wednesday, October 28, 1998

The Court convened at 9:00 a.m. in its courtroom at 303 - 2nd Street, Fourth Floor, San Francisco. Present: Strankman, P.J., Stein, J., Swager, J. and B. Robbins, Deputy Clerk.

- A080699 Katherine Koch,
v.
Mt. Diablo Unified School District, et al.
Cause called and argued by Clifford B. Malone, counsel for appellant, via teleconference, and Kathryn Luhe, counsel for respondent Mt. Diablo Unified School District. Cause ordered submitted.
- A078707/
A080001 Northgate Foothills Association, et al.
v.
Richard L. Mudgett, et al.
Cause called and argued by Jefferson Frazier, counsel for appellants/respondents Northgate Foothills Association, et al., and Charles E. Merrill, counsel for respondents/appellants Mudgett, et al. Cause ordered submitted.
- A081142 John P. Creighton,
v.
Nicholas J. Sutton, et al.
Cause called and argued by Frank I. Mulberg, counsel for appellants, and Todd Hedin, counsel for respondent. Cause ordered submitted.
- A077789 The People,
v.
Alexander Lee Buirst.
Cause called and argued by Eric Malthaup, counsel for appellant, and Raymond Cardozo, Deputy Attorney General, counsel for respondent. Counsel for appellant objected to the Court's denial of consolidation of the appeal and the related petition for habeas corpus. Cause ordered submitted.

A080386 The People,
 v.
 Henry Amaeshi Nwozuzu.
Cause called and argued by Rodger Curnow, counsel for appellant, via
teleconference, and Raymond Cardozo, Deputy Attorney General, counsel
for respondent. Cause ordered submitted.

A080645 M. Thomas Risner, et al.
 v.
 World Savings and Loan Association.
Cause called and argued by Leonard Steiner, counsel for appellants, via
teleconference, and Barry W. Lee, counsel for respondent. Cause ordered
submitted.

Court recessed until 2 p.m.

The Court reconvened at 2:00 p.m. Present: Strankman, P.J., Stein, J., Swager, J. and B. Robbins, Deputy Clerk.

A079074/ John Stewart Brown, et al.,
A079132/ v.
A079875 Mediplane, Inc.

John Stewart Brown, et al.,
v.
State of California.

John Stewart Brown, et al.,
v.
County of Solano.

Causes called and argued by Stephen J. Mackey, counsel for appellants, and Taylor Bell, counsel for respondent Mediplane; William Krabbenhoft, Deputy Attorney General, counsel for respondent State of California; and Kathleen Keeshen, Deputy County Counsel, counsel for respondent County of Solano. Causes ordered submitted.

A079761/ Cammerin K. Boyd, et al.
A080055 v.
Toyota Motor Sales, U.S.A., Inc.

Cammerin K. Boyd, et al.
v.
Sonnen Motor Company, II, Inc.

Causes called and argued by Marylon M. Boyd, counsel for appellants, and Alan J. Lazarus, counsel for respondent Toyota Motor Sales, and Mark G. Bonino, counsel for respondent Sonnen Motor Company. Causes ordered submitted.

A081161 Alan F. Wolcott,
v.
Mellon Mortgage Company, et al.

Cause called. Alan F. Wolcott, appellant in pro per, did not appear for argument and Lawrence J. Dreyfuss, counsel for respondent, appearing via teleconference, submitted on the briefs. Cause ordered submitted.

Court adjourned.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, October 29, 1998

DIVISION TWO

A078323 -- Dustin Phillip Smyth et al. v. Flightcraft, Inc.

The judgment is affirmed. Ruvolo, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

A078775 -- William F. Marweg v. Retirement Board of the City and County of San Francisco.

The judgment is affirmed. Each party shall bear its own costs on appeal. Kline, P.J. We concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A079653 -- Barbara Westover et al. v. Oregon Mutual Insurance Company.

The judgment is modified to delete the offset of \$51,440 granted to Oregon Mutual and is in all other respects affirmed. Kline, P.J. We concur: Haerle, J., Ruvolo, J. (Not for Publication.)

A080637 -- Betty Harris v. Beverly Dupree.

The judgment is affirmed. Costs on appeal to Harris. Kline, P.J. We concur: Haerle, J., Ruvolo, J. (Not for Publication.)

A084154 -- In re Jimmy Dean Beard, on Habeas Corpus.

By The Court: The petition for writ of habeas corpus is denied. Kline, P.J.

Thursday, October 29, 1998 (continued)

A084568 -- In re Rickey Alexander, on Habeas Corpus.

By The Court: The petition for writ of habeas corpus is denied. Kline, P.J.

DIVISION THREE

A080057 -- Dorene L. Musilli et al. v. Amen & Keith et al.

We reverse. In light of that reversal, we also set aside the order after judgment awarding sanctions. The motion for sanctions on appeal is denied. Each party to bear its own costs. Corrigan, J. We concur: Phelan, P.J., Parrilli, J. (Not for Publication.)

DIVISION FOUR

A076645 -- The People v. Anthony Charles Renn.

Defendant's final contentions present various constitutional challenges to a sentence of 127 years to life. These challenges are premature at this time. The remand to the trial court may result in reduction of defendant's final sentence. Until we know the length of defendant's final sentence, there is no basis for determining whether there are actual and valid constitutional objections.

The purported appeal from the order denying defendant's motion for recall of his sentence pursuant to section 1170, subdivision (d), is dismissed. The cause is remanded to the trial court for consideration of whether concurrent sentences are appropriate. The judgment of conviction is affirmed in all other respects. Poché, Acting P.J. We concur: Reardon, J., McGuiness, J. (Not for Publication.)

Thursday, October 29, 1998 (continued)

A076882, A077532 -- Richard F. Evangelho et al. v. Darlene T. Presoto.

The orders defining the rights of respondents as beneficiaries to an accounting are affirmed. Costs are awarded to respondents. Sanctions are denied since it does not appear that the appeal was frivolous or taken solely for delay. Hanlon, P.J. We concur: Reardon, J., McGuiness, J. (Certified for Publication.)

A078041 -- Gracina D. Fong v. Benjamin O. Andersen et al.

The judgment is affirmed with costs to Anderson. Hanlon, P.J. We concur: Poché, J., McGuiness, J. (Not for Publication.)

A078216 -- The People v. Larry Sullivan Abrams, Jr.

The judgment is affirmed. Hanlon, P.J. We concur: Reardon, J., McGuiness, J. (Not for Publication.)

A078860 -- County of Mendocino v. Phillip W. Wasson et al.

The judgment is affirmed with costs to respondent. Hanlon, P.J. We concur: Reardon, J., McGuiness, J. (Not for Publication.)

A079125 -- The People v. Gonzalo Diaz Vega.

The order dismissing the action is reversed. McGuiness, J. We concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

A079298 -- In re Debra D., Jr. et al., Persons Coming Under the Juvenile Court Law.

A079307 -- In re William D., Jr. et al., Persons Coming Under the Juvenile Court Law.

Order Modifying Opinion; By the Court: The opinion filed October 1, 1998, in the above-referenced matter is modified as follows: (See Order.)

These modifications do not effect a change in the judgment. Hanlon, P.J. (Not for Publication.)

Thursday, October 29, 1998 (continued)

A080153 -- In re Bobbi Ann W., a Person Coming Under the Juvenile Court Law.

A084009 -- In re Brigitte A., On Habeas Corpus.

The order terminating appellant's parental rights is affirmed. The petition for writ of habeas corpus is denied. Hanlon, P.J. We concur: Poché, J., Reardon, J. (Not for Publication.)

A080370 -- In re the Marriage of Victoria N. Sas (Blair) and Andrew J. Sas, Jr.

The order is affirmed. Respondent shall recover his costs on appeal. Hanlon, P.J. We concur: Poché, J., Reardon, J. (Not for Publication.)

A080755 -- The People v. William Geno Marracino.

The October 8, 1997, order finding appellant ineligible to petition for a certificate of rehabilitation is reversed, with instructions to determine the petition on the merits. Hanlon, P.J. We concur: Poché, J., McGuinness, J. (Not for Publication.)

A083068 -- The People v. Wendrick Anthony Allen.

The judgment is affirmed. McGuinness, J. We concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Thursday, October 29, 1998

Court convened at 9:00 a.m. in its Courtroom at 303 Second Street, Marathon Plaza, South Tower, Fourth Floor, San Francisco, California.

Present: Phelan, P.J., Corrigan, J., Parrilli, J. Walker, J., and J. Casados, Deputy Clerk.

Justice Phelan announced he was one of the panel members on the first three matters to be argued this morning. Unfortunately, he has an emergency meeting this morning and will not be able to stay for argument. If counsel does not object to having a two-judge panel hear argument with his leispanceejct . i

A078620 Norcal Mutual Insurance Company,

v.

Valeria J. Adams et al.

Cause called. Counsel both agree that they prefer a full panel at oral argument. The matter is continued to 1:30 p.m. this

A078697 Juanita Valette,

v.

Manila Oriental Market.

Cause called. Robert M. Neubauer, counsel for appellant, and Bradley L. Bostick, counsel for respondents. Cause ordered submitted.

A078452 The People,

v.

Garry Russell Walker.

Cause called. Linda S. Murphy, Deputy Attorney General, counsel for respondent. No appearance by Candace Hall, counsel for appellant. Ms. Hall is telephoned by the court regarding oral argument this morning. She states that she has been very ill going back-in-forth to the doctor. She asked the court's forgiveness and requests the matter be continued to the next available oral argument calendar. The matter is continued to Tuesday, November 3, 1998, the time to be advised.

A077553 Otis McPeters,
v.
Al Norman,
Cause called and argued by Robert Vallandigham, counsel for appellant,
and Gregory M. Haynes, counsel for respondent. Cause ordered submitted.

court adjourned

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Thursday, October 29, 1998

Court reconvened at 1:30 p.m. in its Courtroom at 303 Second Street, Marathon Plaza,
South Tower, Fourth Floor, San Francisco, California.

Present: Phelan, P.J., Corrigan, J., Parrilli, J. and C. Turner, Deputy Clerk.

A078620 Norcal Mutual Insurance

v.

Valerie Jean Adams, et al.,

Cause called and argued by Richard Katz, counsel for appellant, and
Maureen E. Baur, counsel for respondent. Cause ordered submitted.

A080183 Coral Rehab Services, Inc.

v.

CASHA Resource Home Health Services, Inc.

Cause called and argued by Richard Romaniw, counsel for appellant, and
Maureen E. Baur, counsel for respondent, arguing via tele-conference.
Cause ordered submitted.

Justice Corrigan left the bench.

Justice Walker took his place on the bench.

A080008 Katharine Whipple Vestri,

v.

California State Department of Motor Vehicles,

Cause called and argued by Paul Burglin, counsel for appellant, and Judith
Loach, Deputy Attorney General, counsel for respondent. Cause ordered
submitted.

Court adjourned

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Friday, October 30, 1998

DIVISION ONE

A074016 -- The People v. Samuel Gardner Eldredge.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

A079522 -- Jude Bullock v. Occupational Health Services, Inc.

The summary judgment is affirmed. Costs of appeal are awarded to respondent. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

A080325 -- The People v. Bobby Gene Gillis.

Although there were some irregularities in the trial proceedings, the evidence of appellant's guilt was substantial and no prejudice resulted. The judgment is affirmed. Marchiano, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

A080662 -- The People v. Blanca Rubia Escobar.

The judgment is affirmed. Marchiano, J. We concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A080699 -- Katherine Koch v. Mount Diablo Unified School District, et al.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

Friday, October 30, 1998 (continued)

A081142 -- John P. Creighton v. Nicholas J. Sutton et al.

In the absence of any ground for setting aside the arbitrator's decision, we decline to review the legal and evidentiary errors urged by appellant. The judgment is affirmed. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

A081161 -- Alan F. Wolcott v. Mellon Mortgage Company et al.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

A081821 -- Bay Apartment Communities v. Rodney Busk.

By The Court: Due to a clerical error the dismissal order filed October 20, 1998 pursuant to California Rules of Court 17(a) is hereby vacated and the above-captioned appeal is restored to active status.

The appellant's opening brief is to be served and filed by November 5, 1998. Strankman, P.J.

DIVISION TWO

A078486 -- Susanna Toigo et al. v. Town of Ross et al.

The judgment is affirmed. Costs of appeal are awarded to respondents. Ruvolo, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

A080731 -- The People v. Gary Michael Price.

The order is affirmed. Lambden, J. We concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

Friday, October 30, 1998 (continued)

A081087 -- Jane Lindstrom v. Richard Gabel.

This appeal is dismissed without reached its merits for lack of appellate jurisdiction. Ruvolo, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

A081094 -- Grossmont Hospital District v. S. Kimberly Belshe.

We remand for the trial court to rule whether the Department is estopped from asserting Grossmont failed to comply with section 911.2. The parties are to pay their own costs on appeal. Lambden, J. We concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

A081148 -- The People v. Donna Lynn Garlin.

The judgment is affirmed. Lambden, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

A082365 -- In re Stephan B., a Person Coming Under the Juvenile Court Law.

The order adjudging appellant a continued ward of the court and placing him at the CYA is affirmed. Lambden, J. We concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A084293 -- Jesus Arreola v. Workers' Compensation Appeals Board and Miller Redwood Company.

The Court: The petition for writ of review is denied. Kline, P.J.

A084671 -- David J. Oranen, D.C. v. Board of Chiropractic Examiners of the State of California.

The petition for writ of supersedeas/stay is denied. Haerle, Acting P.J.

Friday, October 30, 1998 (continued)

DIVISION THREE

A077626 -- Richard Erchinger v. Jeffrey Heier.

We modify the judgment by striking the award of prejudgment interest in the amount of \$8,109.87 to Erchinger and by striking the award of attorney fees in the amount of \$20,000.00 to Adams. We affirm the judgment as modified. Erchinger is awarded his costs on appeal. Phelan, P.J. We concur: Corrigan, J., Walker, J. (Not for Publication.)

A078869 -- Maria Louie v. Hayman Homes, Inc., et al.

Anna Kwan Wong v. Hayman Homes, Inc., et al.

The judgments are affirmed. Costs on appeal to respondents. Phelan, P.J. We concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A079033 -- The People v. Jimmie Lee Bills.

The judgment upon resentencing is affirmed. The matter is remanded to the sentencing court with instructions to file and forward to the Department of Corrections an abstract of judgment reflecting the sentence imposed on May 19, 1997, and stating the award of credits as contained in the sentencing court's January 21, 1998 order. Corrigan, Acting P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

A079108 -- The People v. Sylvester Knight, Jr.

The judgment is affirmed. Corrigan, Acting P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

A079613 -- The People v. Danny Lee Martin.

The case is remanded to the superior court to allow appellant the opportunity to withdraw his plea. Should he fail to do so within 45 days of the filing of the remittitur, the judgment is affirmed. Phelan, P.J. We concur: Corrigan, J., Walker, J. (Not for Publication.)

Friday, October 30, 1998 (continued)

A079988 -- The People v. William Bradley Lamotte.

The judgment is affirmed. Parrilli, J. We concur: Phelan, P.J., Corrigan, J. (Not for Publication.)

A080732 -- The People v. Raymond Jared Lukens.

The judgment is affirmed. Parrilli, J. We concur: Corrigan, Actg. P.J., Walker, J. (Not for Publication.)

A081681 -- The People v. Jamil Muhammad.

We affirm the appellant's sentence. Walker, J. We concur: Phelan, P.J., Parrilli, J. (Not for Publication.)

A081793 -- The People v. Billy Don Rushing.

The judgment is affirmed. Walker, J. We concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

DIVISION FOUR

A077897 -- Robert Pivrotto v. Bernard Belkin.

There was ample evidence to support the trial court's decision that Belkin failed to offset his debt to TCT.

We decline Pivrotto's request to levy sanctions and affirm the judgment. Reardon, J. We concur: Poché, Acting P.J., McGuiness, J. (Not for Publication.)

A079840 -- Empire Waste Management v. Town of Windsor.

The judgment is affirmed. Poché, J. We concur: Hanlon, P.J., McGuiness, J. (Certified for Publication.)

Friday, October 30, 1998 (continued)

A079864 -- The People v. Lamthong Southisone.

The judgment of conviction is affirmed. Poché, J. We concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

A081624 -- Diane L. Sangster v. Tyler M. Paetkau et al.

The judgment is affirmed. Appellant Sangster shall pay respondents' costs on appeal. McGuiness, J. We concur: Poché, Acting P.J., Reardon, J. (Not for Publication.)

A082174 -- In re the Marriage of Viola M. and Levi B. Garcia.

Viola's request for attorney fees, if appropriate, should be addressed to the trial court.

We reverse the judgment and remand for further proceedings in accord with this opinion. Reardon, J. We concur: Hanlon, P.J., Poché, J. (Certified for Publication.)